

## Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

### Task Force on Access to Justice

#### Eleventh meeting

Geneva, 27 and 28 February 2018

Item 2 of the provisional agenda

#### Access to justice in cases

#### on the right to environmental information

#### Information paper N4 revised

## QUESTIONNAIRE

### Access to justice in cases on the right to environmental information

At its sixth session<sup>1</sup>, the Meeting of the Parties to the Aarhus Convention set out the mandate of the Task Force on Access to Justice to promote the exchange of information, experiences, challenges and good practices relating to the implementation of the third pillar of the Convention with special attention to information cases. Available information sources such as Aarhus Convention national implementation reports and e-justice initiatives provide very basic overall description of existing framework but do not go in the details about its elements such as scope of review, time limits, remedies, costs and etc.

To overcome the information gaps, the Aarhus Convention Task Force on Access to Justice will carry out a survey to collect more detailed information, examples of legislation provisions and case law relevant to access to justice in cases on the right to environmental information. The survey could be an important contribution to identifying good practices, addressing key challenges, populating the jurisprudence database and fostering capacity-building efforts to support work in this area. The survey outcomes will lay the ground for advancing the implementation of article 9, para. 1, of the Aarhus Convention and contribute to the monitoring of SDG 16 targets 16.3 and 16.10.

A draft questionnaire was discussed at the eleventh meeting of the Task Force on Access to Justice in Geneva in Geneva on 27-28 February 2018<sup>2</sup> and thereafter revised by the secretariat in consultation with the Chair in the light of the discussion at the meeting and further comments received.

The present questionnaire is distributed to a selection of institutions specialized in information cases in a representative number of Parties from different subregions. In addition, representatives of judiciary, judicial training institutions, other review bodies, non-governmental organizations and stakeholders are welcome to contribute with input on any issue in the questionnaire.

The outcomes of the survey will be synthesized with information from the national implementation reports to a report which will be discussed at the next meeting of the Aarhus Convention Task Force on Access to Justice in Geneva in 2019 and further reported to the subsequent meeting of the Working Group of the Parties to the Aarhus Convention.

Those who want to take part in the survey are kindly invited to complete and return the questionnaire to the following email address: **aarhus.survey@un.org** with the subject line "11TFAJ survey from [name of country, organization]" for processing **before 1 October 2018**. Kindly be informed that the completed questionnaires will be posted on the website of the twelfth meeting of the Task Force.

<sup>1</sup> See para. 14(a) (i) of decision VI/3 of the Meeting of the Parties adopted at its sixth session (Budva, Montenegro, 11–13 September 2017) available from [http://www.unece.org/env/pp/aarhus/mop6\\_docs.html](http://www.unece.org/env/pp/aarhus/mop6_docs.html)

<sup>2</sup> More information is available from <http://www.unece.org/env/pp/aarhus/tfaj11.html>

**CONTACT INFORMATION**

Please provide name and contact data of the person who filled in the questionnaire:

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*Questions concerning access to justice in cases on the right to environmental information:*

1. Please indicate *time limits* for public authorities holding environmental information to respond to requests for environmental information. Is there a requirement for the issuance of a *refusal in writing and stating reasons* for the decision? How is the applicant *informed* about the possibilities to appeal the decision?

*– I suppose there is an upper time limit for response. However, my experience is that, as a general rule, environmental information is provided “immediately” by public authorities. Don’t know if there is a requirement for the issuance of a refusal in writing and stating reasons for the decision, but in all cases I have been involved in underlying reasons for the decision have always been presented with the decision. Possibilities to appeal are also clearly stated, at least as an attachment.*

2. What are the *time limits to appeal* a decision on access to environmental information? What are the most frequently used grounds for appeal? Are there any issues concerning *who has standing* in such cases? To *what body and in which form* is the appeal made; recourse for review within the public authority or to the higher authority; Information Commissioner, Ombudsman or any other independent and impartial body; or directly to court of law? If appeal to the review body other than a court of law is available in any form, does that request suspend the time limits to appeal to the court? Is there a requirement of *exhaustion* of administrative review procedures prior to bringing the case to court?

*– Time limits vary, but is often set to three weeks from the time the decision has been presented to the relevant part. The most frequently used grounds for appeal are violations to environmental factors that has been neglected in the decision. As an organisation, we are sometimes asked to present documents stating that we have the right to appeal. The written appeal is made to the next level of court, but sent to the authority/court of last decision. Don’t think appeal to review body other than a court of law is available, neither is requirement of exhaustion of administrative review procedures prior to bringing the case to court.*

3. If appeal is made to an independent body mentioned above, how is the *independence and impartiality* of that body ensured?

*– All Swedish authorities/courts should be independent and impartial.*

4. What *costs (fees, charges)* are connected to review before the court of law or other review bodies in these cases?

*– None.*

5. What is the average time needed for the court of law or another independent and impartial body to decide an information case, i.e. from the introduction of the appeal to the notification of the decision? If the national rules of appeal require administrative reconsideration before the appeal is submitted to the court of law or another review body, that time should also be also separately specified.

*– My guess is 3-6 months, approximately.*

6. Are decisions of courts and other review bodies in information cases in writing, publicly available, binding and final? If the appeal is successful, how is the independent body’s/court’s *decision enforced*; by ordering the public authority to disclose the information; by

disclosing the information directly; by suing the public authority if they persist in refusing to disclose the information or by any other means?

*– All Swedish authorities/courts should be independent and impartial.*

7. Can disciplinary, administrative or criminal *sanctions be exercised* against the public officials if disclosure of environmental information is refused unlawfully? Would it be possible for the applicant or other members of the public to be a party to such proceedings?

*– I suppose sanctions will never be exercised, as public officials are not really able to disclose relevant information.*

8. Do you have any experience of situations/cases where individuals or ENGOs asking for environmental information have been *penalized, persecuted or harassed* in any way for their involvement?

*– No.*

9. Do you have any experience of *misuse or abuse* of the right to environmental information and the consequences thereof?

*– No.*

10. In your view, what are the *main barriers* in your legal system concerning access to justice for the members of the public in cases on the right to environmental information?

*– There are certain cases when the Swedish legal system is not coherent with the Aarhus Convention. For example, NGOs are not allowed to appeal decisions regarding electricity lines not exceeding 220 kV and 15 km. BirdLife Sweden has appealed such a case to the highest environmental court*

11. Does your legal system provide with any *innovative approaches* concerning administrative and judicial review procedures in cases on the right to environmental information, for example concerning the requirement for the procedure to be expeditious, the use of alternative dispute resolutions (ADRs), costs, remedies, means for execution of review decisions on disclosure or use of e-justice initiatives?

*– Not to my knowledge.*

12. Can you please provide us with a short description of particularly important or innovative information cases, as well as cases which illustrate the main barriers concerning access to justice in these matters.